

BEFORE THE COMMISSION FOR COMMON-INTEREST
COMMUNITIES AND CONDOMINIUM HOTELS
STATE OF NEVADA

JOSEPH (J.D.) DECKER, Administrator,
REAL ESTATE DIVISION, DEPARTMENT
OF BUSINESS & INDUSTRY,
STATE OF NEVADA,

Petitioner,

vs.

222 INCLINE COURT, LLC; FALCON
CAPITAL, LLC; GORDON R. LANE; and
GLENN HARTMAN,

Respondents.

Case No. IN-1650 (2013-1203)

FILED

OCT 14 2015

NEVADA COMMISSION OF
COMMON INTEREST COMMUNITIES
AND CONDOMINIUM HOTELS

**COMPLAINT FOR DISCIPLINARY
ACTION AND NOTICE OF HEARING**

The Real Estate Division of the Department of Business and Industry, State of Nevada (the "Division"), by and through its counsel, Adam Paul Laxalt, Attorney General of the State of Nevada, and Michelle D. Briggs, Senior Deputy Attorney General, hereby notifies Respondents 222 INCLINE COURT, LLC; FALCON CAPITAL, LLC; GORDON R. LANE; and GLENN HARTMAN of an administrative hearing before the Commission for Common-Interest Communities and Condominium Hotels, State of Nevada, which is to be held pursuant to Chapters 233B and 116 of the Nevada Revised Statutes ("NRS") and Chapter 116 of the Nevada Administrative Code ("NAC"). The purpose of the hearing is to consider the allegations stated below and to determine if an administrative penalty will be imposed on the RESPONDENTS pursuant to the provisions of NRS and NAC including, but not limited to, NRS 116.785 and NRS 116.790.

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JURISDICTION AND NOTICE

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2 1. During the relevant times mentioned in this complaint, RESPONDENTS
3 GORDON R. LANE and GLENN HARTMAN were declarant appointed officers and directors
4 of Northwood Unit-Owners' Association (the "Association"), a homeowners' association
5 located in Incline Village, Nevada.

6 2. RESPONDENT FALCON CAPITAL, LLC, a Wyoming limited liability company,
7 represented itself to be the Association's Declarant. RESPONDENT 222 INCLINE COURT,
8 LLC, a Nevada limited liability company, was the owner of the property within the Association
9 and sold the units, not previously transferred, as part of a common promotional plan.

10 3. RESPONDENTS are subject to the provisions of Chapter 116 of each the
11 Nevada Revised Statutes ("NRS") and the Nevada Administrative Code ("NAC") (hereinafter
12 collectively referred to as "NRS 116") and are subject to the jurisdiction of the Division, and
13 the Commission for Common Interest Communities pursuant to the provisions of NRS
14 116.750.

FACTUAL ALLEGATIONS

15
16 4. Northwood Unit-Owners' Association (the "Association") created in 2008
17 governs property consisting of 8 condominium units.

18 5. The condominium units are located in two buildings that were built in 2006 and
19 sold beginning in 2011.

20 6. According to the Declaration of Covenants, Conditions and Restrictions for
21 Northwood Condominiums (CC&R's) recorded December 2, 2008 the buildings were
22 converted to condominiums and RESPONDENT 222 INCLINE COURT, LLC is the declarant.

23 7. An amendment by re-recording of the CC&R's on March 13, 2009 includes a
24 handwritten strike through of RESPONDENT 222 INCLIDE COURT, LLC to state
25 RESPONDENT FALCON CAPITAL, LLC.

26 8. RESPONDENT FALCON CAPITAL, LLC was the owner of the property which
27 became subject to the CC&R's until it transferred the property to RESPONDENT 222
28 INCLINE COURT, LLC by deed recorded November 19, 2009.

1 9. RESPONDENT 222 INCLINE COURT, LLC sold the condominium units to
2 buyers beginning in 2011.

3 10. RESPONDENT GORDON R. LANE is the managing member of
4 RESPONDENT FALCON CAPITAL, LLC.

5 11. RESPONDENT GLENN HARTMAN is the managing member of
6 RESPONDENT 222 INCLINE COURT, LLC.

7 12. RESPONDENTS GLENN HARTMAN and GORDON R. LANE are listed as the
8 board members and officers of the Association in the Initial Association Registration form
9 submitted to the Division on or about October 27, 2008.

10 13. The Initial Registration Form lists RESPONDENT FALCON CAPITAL, LLC as
11 the declarant and custodian of records.

12 14. Seventy-five percent of the units were sold as of April 20, 2012.

13 15. Transition of control of the Association's board occurred on October 19, 2012.

14 16. On March 18, 2013, the Association's board president filed an intervention
15 affidavit against the declarant alleging noncompliance with the turnover requirements of NRS
16 116.31038.

17 17. The Association states that it did not receive original governing documents, as
18 built landscape plans, audited financial statements from the date the Association received
19 money, a reserve study prepared by a reserve study specialist, funded reserve account,
20 disclosure of subsidized amounts, personal property, plans and specifications of the
21 improvements, certificates of occupancy, renewable permits and approvals, warranties from
22 subcontractors, roster of owners and mortgage holders, contracts, conveyance of common
23 elements to the Association, or the public offering statement.

24 18. The Association had a reserve study prepared by a reserve study specialist as
25 of January 22, 2013 which concluded the reserve beginning balance should be \$125,000, but
26 it had just over \$12,000.

27 19. RESPONDENT GORDON R. LANE denied any knowledge about the
28 Association stating he was the original developer of the units, but not part of the

1 condominium conversion.

2 20. RESPONDENT GORDAN R. LANE signed the re-recorded CC&R's on March
3 13, 2009 which lists RESPONDENT FALCON CAPITAL, LLC as the declarant.

4 21. Attorneys for RESPONDENT GLENN HARTMAN object to having 222 INCLINE
5 COURT, LLC referred to as the declarant, but do agree to provide what documents they
6 have.

7 22. RESPONDENT 222 INCLINE COURT, LLC sold the units in the Association
8 under a common promotional plan to sell all the units not previously sold, which is the
9 definition of "declarant" under NRS 116.035, and is still the owner of the common element
10 parcel.

11 VIOLATIONS OF LAW

12 23. RESPONDENTS violated NRS 116.310395 by failing to fund the converted
13 building reserve deficit at the time of each close of escrow of a unit in the Association.

14 24. RESPONDENTS violated NRS 116.31038(1) by failing to provide the original or
15 a certified copy of the recorded declaration as amended, the articles of incorporation, articles
16 of association, articles of organization, certificate of registration, certificate of limited
17 partnership, certificate of trust or other documents of organization for the association, the
18 bylaws, minute books and other books and records of the association and any rules or
19 regulations which may have been adopted.

20 25. RESPONDENTS violated NRS 116.31038(2) by failing to provide an accounting
21 for money of the Association and audited financial statements for each fiscal year and any
22 ancillary period from the date of the last audit of the association to the date the period of the
23 declarant's control ends.

24 26. RESPONDENTS violated NRS 116.31038(3) by failing to provide a complete
25 study of the reserves of the Association, conducted by a person who is registered as a
26 reserve study specialist pursuant to chapter 116A of NRS.

27 27. RESPONDENTS violated NRS 116.31038(3)(a) and (b) by failing to provide a
28 reserve account with declarant's share then due and by failing to disclose the amount the

1 declarant subsidized the Association's dues on a per unit basis.

2 28. RESPONDENTS violated NRS 116.31038(5) by failing to provide all of the
3 declarant's tangible personal property that has been represented by the declarant as property
4 of the Association or, unless the declarant has disclosed in the public offering statement that
5 all such personal property used in the common-interest community will remain the declarant's
6 property, all of the declarant's tangible personal property that is necessary for, and has been
7 used exclusively in, the operation and enjoyment of the common elements, and inventories of
8 the properties.

9 29. RESPONDENTS violated NRS 116.31038(6) by failing to provide a copy of any
10 plans and specifications used in the construction of the improvements in the common-interest
11 community which were completed within 2 years before the CC&R's were recorded.

12 30. RESPONDENTS violated NRS 116.31038(7) by failing to provide all insurance
13 policies then in force, in which the units' owners, the Association, or its directors and officers
14 are named as insured persons.

15 31. RESPONDENTS violated NRS 116.31038(8) by failing to provide copies of any
16 certificates of occupancy that may have been issued with respect to any improvements
17 comprising the common-interest community.

18 32. RESPONDENTS violated NRS 116.31038(9) by failing to provide any
19 renewable permits and approvals issued by governmental bodies applicable to the common-
20 interest community which are in force and any other permits and approvals so issued and
21 applicable which are required by law to be kept on the premises of the community.

22 33. RESPONDENTS violated NRS 116.31038(10) by failing to provide written
23 warranties of the contractor, subcontractors, suppliers and manufacturers that are still
24 effective.

25 34. RESPONDENTS violated NRS 116.31038(11) by failing to provide a roster of
26 owners and mortgagees of units and their addresses and telephone numbers, if known, as
27 shown on the declarant's records.

28 35. RESPONDENTS violated NRS 116.31038(12) by failing to provide contracts of

1 employment in which the Association is a contracting party.

2 36. RESPONDENTS violated NRS 116.31038(13) by failing to provide contracts for
3 service in which the Association is a contracting party or in which the Association or the units'
4 owners have any obligation to pay a fee to the persons performing the services.

5 37. RESPONDENTS GORDON R. LANE and GLENN HARTMAN violated NRS
6 116.3103 by failing to act in the best interests of the Association when they failed to turn over
7 all required documents to the Association pursuant to NRS 116.31038.

8 **DISCIPLINE AUTHORIZED**

9 Pursuant to the provisions of NRS 116.615; NRS 116.755; NRS 116.785; and NRS
10 116.790 the Commission has discretion to take any or all of the following actions:

- 11 1. Issue an order directing RESPONDENTS to cease and desist from continuing to
12 engage in the unlawful conduct that resulted in the violation.
- 13 2. Issue an order directing RESPONDENTS to take affirmative action to correct any
14 conditions resulting from the violation.
- 15 3. Impose an administrative fine of up to \$1,000 for each violation by RESPONDENTS.
- 16 4. Require RESPONDENTS to pay the costs of the proceedings incurred by the Division,
17 including, without limitation, the cost of the investigation and reasonable attorney's
18 fees.
- 19 5. Take whatever further disciplinary action as the Commission deems appropriate.

20 The Commission may order one or any combination of the discipline described above.
21 If the Commission finds that the RESPONDENTS knowingly and willfully violated the
22 provisions of NRS or NAC 116, the Commission may order that RESPONDENTS be
23 personally liable for all fines and costs imposed.

24 **NOTICE OF HEARING**

25 PLEASE TAKE NOTICE, that a disciplinary hearing has been set to consider this
26 Administrative Complaint against the above-named RESPONDENTS in accordance with
27 Chapters 233B and 116 and 116A of the Nevada Revised Statutes and Chapters 116 and
28 116A of the Nevada Administrative Code.

1 THE HEARING WILL TAKE PLACE at the Commission meeting scheduled for
2 November 17-19, 2015 beginning at 9:00 a.m. each day or until such time as the Commission
3 concludes its business. The Commission meeting on November 17, 2015, will be located at
4 the Nevada State Gaming Control Board, 1919 College Parkway, Carson City, Nevada
5 89706, with videoconferencing to the Nevada State Gaming Control Board at the Grant
6 Sawyer Building, 555 E. Washington Ave., Room 2450, Las Vegas, Nevada 89101. The
7 Commission meeting on November 18 and 19, 2015, will be located at the State of Nevada,
8 Department of Business and Industry, Division of Insurance, 1818 East College Parkway, 1st
9 floor Hearing Room, Carson City, Nevada 89706, with videoconferencing to the Department
10 of Business and Industry, 2501 E. Sahara Avenue, 2nd Floor Conference Room, Las Vegas
11 Nevada 89104.

12 STACKED CALENDAR: Your hearing is one of several hearings that may be
13 scheduled at the same time as part of a regular meeting of the Commission that is expected
14 to take place on November 17-19, 2015. Thus, your hearing may be continued until later in
15 the day or from day to day. It is your responsibility to be present when your case is called. If
16 you are not present when your hearing is called, a default may be entered against you and
17 the Commission may decide the case as if all allegations in the complaint were true. If you
18 need to negotiate a more specific time for your hearing in advance because of coordination
19 with out of state witnesses or the like, please call Claudia Rosolen, Commission Coordinator,
20 at (702) 486-4606.

21 YOUR RIGHTS AT THE HEARING: Except as mentioned below, the hearing is an
22 open meeting under Nevada's open meeting law, and may be attended by the public. After
23 the evidence and arguments, the commission may conduct a closed meeting to discuss your
24 alleged misconduct or professional competence. A verbatim record will be made by a certified
25 court reporter. You are entitled to a copy of the transcript of the open and closed portions of
26 the meeting, although you must pay for the transcription.

27 As a RESPONDENT, you are specifically informed that you have the right to appear
28 and be heard in your defense, either personally or through your counsel of choice. At the

1 hearing, the Division has the burden of proving the allegations in the complaint and will call
2 witnesses and present evidence against you. You have the right to respond and to present
3 relevant evidence and argument on all issues involved. You have the right to call and
4 examine witnesses, introduce exhibits, and cross-examine opposing witnesses on any matter
5 relevant to the issues involved.

6 You have the right to request that the Commission issue subpoenas to compel
7 witnesses to testify and/or evidence to be offered on your behalf. In making this request, you
8 may be required to demonstrate the relevance of the witness' testimony and/or evidence.
9 Other important rights and obligations, including your obligation to answer the complaint, you
10 have are listed in NRS Chapter 116 and NAC Chapter 116, including without limitation, NRS
11 116.770 through 116.780, and NAC 116.500 through NAC 116.635 and NRS Chapter 233B.

12 Note that under NAC 116.575, not less than five (5) working days before a hearing,
13 RESPONDENT must provide to the Division a copy of all reasonably available documents
14 that are reasonably anticipated to be used to support his position, and a list of witnesses
15 RESPONDENTS intend to call at the time of the hearing. Failure to provide any document or
16 to list a witness may result in the document or witness being excluded from RESPONDENTS'

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1 defense. The purpose of the hearing is to determine if the RESPONDENTS have violated the
2 provisions of Chapter 116, and to determine what administrative penalty is to be assessed
3 against RESPONDENTS.

4 DATED this 13th day of October, 2015.

6 REAL ESTATE DIVISION
7 DEPARTMENT OF BUSINESS & INDUSTRY
8 STATE OF NEVADA

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